

AMENDED IN ASSEMBLY APRIL 19, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1475**

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**Introduced by Assembly Member Galgiani**

February 23, 2007

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An act to amend Sections 11165.7 and 11166 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL’S DIGEST

AB 1475, as amended, Galgiani. Crime: child abuse reporting.

Existing law identifies specified persons as mandated reporters who must submit a report to law enforcement whenever in their professional capacity or within the scope of their employment, they have knowledge of or observe a child whom he or she knows or reasonably suspects has been the victim of child abuse or neglect, including commercial film and photographic print processors.

This bill would expand this list of persons identified as mandated reporters to include commercial computer technicians, as defined.

Existing law requires any commercial film and photographic print processor who has knowledge of or observes in his or her professional capacity or employment any film, photograph, videotape, negative, or slide depicting a child under 16 years of age engaging in an act of sexual conduct to report the instance of suspected child abuse to a law enforcement agency, as specified.

This bill would expand these provisions to include commercial computer technicians and computer files and recordings, as specified, and instead requires that he or she report any depiction of a child who appears to be under 16 years of age being subject to, or involved in, sexual abuse.

Because this bill would increase the duties of local officials, and because a violation of these provisions would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 11165.7 of the Penal Code is amended  
2     to read:  
3     11165.7. (a) As used in this article, “mandated reporter” is  
4     defined as any of the following:  
5         (1) A teacher.  
6         (2) An instructional aide.  
7         (3) A teacher’s aide or teacher’s assistant employed by any  
8         public or private school.  
9         (4) A classified employee of any public school.  
10        (5) An administrative officer or supervisor of child welfare and  
11        attendance, or a certificated pupil personnel employee of any public  
12        or private school.  
13        (6) An administrator of a public or private day camp.  
14        (7) An administrator or employee of a public or private youth  
15        center, youth recreation program, or youth organization.  
16        (8) An administrator or employee of a public or private  
17        organization whose duties require direct contact and supervision  
18        of children.  
19        (9) Any employee of a county office of education or the  
20        California Department of Education, whose duties bring the  
21        employee into contact with children on a regular basis.  
22        (10) A licensee, an administrator, or an employee of a licensed  
23        community care or child day care facility.

1 (11) A Head Start program teacher.

2 (12) A licensing worker or licensing evaluator employed by a  
3 licensing agency as defined in Section 11165.11.

4 (13) A public assistance worker.

5 (14) An employee of a child care institution, including, but not  
6 limited to, foster parents, group home personnel, and personnel of  
7 residential care facilities.

8 (15) A social worker, probation officer, or parole officer.

9 (16) An employee of a school district police or security  
10 department.

11 (17) Any person who is an administrator or presenter of, or a  
12 counselor in, a child abuse prevention program in any public or  
13 private school.

14 (18) A district attorney investigator, inspector, or local child  
15 support agency caseworker unless the investigator, inspector, or  
16 caseworker is working with an attorney appointed pursuant to  
17 Section 317 of the Welfare and Institutions Code to represent a  
18 minor.

19 (19) A peace officer, as defined in Chapter 4.5 (commencing  
20 with Section 830) of Title 3 of Part 2, who is not otherwise  
21 described in this section.

22 (20) A firefighter, except for volunteer firefighters.

23 (21) A physician, surgeon, psychiatrist, psychologist, dentist,  
24 resident, intern, podiatrist, chiropractor, licensed nurse, dental  
25 hygienist, optometrist, marriage, family and child counselor,  
26 clinical social worker, or any other person who is currently licensed  
27 under Division 2 (commencing with Section 500) of the Business  
28 and Professions Code.

29 (22) Any emergency medical technician I or II, paramedic, or  
30 other person certified pursuant to Division 2.5 (commencing with  
31 Section 1797) of the Health and Safety Code.

32 (23) A psychological assistant registered pursuant to Section  
33 2913 of the Business and Professions Code.

34 (24) A marriage, family, and child therapist trainee, as defined  
35 in subdivision (c) of Section 4980.03 of the Business and  
36 Professions Code.

37 (25) An unlicensed marriage, family, and child therapist intern  
38 registered under Section 4980.44 of the Business and Professions  
39 Code.

1 (26) A state or county public health employee who treats a minor  
2 for venereal disease or any other condition.

3 (27) A coroner.

4 (28) A medical examiner, or any other person who performs  
5 autopsies.

6 (29) A commercial film and photographic print processor or  
7 commercial computer technician, as specified in subdivision (e)  
8 of Section 11166. As used in this article, “commercial film and  
9 photographic print processor” means any person who develops  
10 exposed photographic film into negatives, slides, or prints, or who  
11 makes prints from negatives or slides, for compensation. The term  
12 includes any employee of such a person; it does not include a  
13 person who develops film or makes prints for a public agency. As  
14 used in this article, “commercial computer technician” means any  
15 person who repairs, installs, or otherwise services any computer;  
16 including, but not limited to, any component part, device, memory  
17 storage or recording mechanism, auxiliary storage recording or  
18 memory capacity, or any other materials relating to the operation  
19 and maintenance of a computer or computer network or system  
20 for compensation. The term also includes any employee of such  
21 a person.

22 (30) A child visitation monitor. As used in this article, “child  
23 visitation monitor” means any person who, for financial  
24 compensation, acts as monitor of a visit between a child and any  
25 other person when the monitoring of that visit has been ordered  
26 by a court of law.

27 (31) An animal control officer or humane society officer. For  
28 the purposes of this article, the following terms have the following  
29 meanings:

30 (A) “Animal control officer” means any person employed by a  
31 city, county, or city and county for the purpose of enforcing animal  
32 control laws or regulations.

33 (B) “Humane society officer” means any person appointed or  
34 employed by a public or private entity as a humane officer who is  
35 qualified pursuant to Section 14502 or 14503 of the Corporations  
36 Code.

37 (32) A clergy member, as specified in subdivision (d) of Section  
38 11166. As used in this article, “clergy member” means a priest,  
39 minister, rabbi, religious practitioner, or similar functionary of a  
40 church, temple, or recognized denomination or organization.

1 (33) Any custodian of records of a clergy member, as specified  
2 in this section and subdivision (d) of Section 11166.

3 (34) Any employee of any police department, county sheriff's  
4 department, county probation department, or county welfare  
5 department.

6 (35) An employee or volunteer of a Court Appointed Special  
7 Advocate program, as defined in Rule 1424 of the California Rules  
8 of Court.

9 (36) A custodial officer as defined in Section 831.5.

10 (37) Any person providing services to a minor child under  
11 Section 12300 or 12300.1 of the Welfare and Institutions Code.

12 (b) Except as provided in paragraph (35) of subdivision (a),  
13 volunteers of public or private organizations whose duties require  
14 direct contact with and supervision of children are not mandated  
15 reporters but are encouraged to obtain training in the identification  
16 and reporting of child abuse and neglect and are further encouraged  
17 to report known or suspected instances of child abuse or neglect  
18 to an agency specified in Section 11165.9.

19 (c) Employers are strongly encouraged to provide their  
20 employees who are mandated reporters with training in the duties  
21 imposed by this article. This training shall include training in child  
22 abuse and neglect identification and training in child abuse and  
23 neglect reporting. Whether or not employers provide their  
24 employees with training in child abuse and neglect identification  
25 and reporting, the employers shall provide their employees who  
26 are mandated reporters with the statement required pursuant to  
27 subdivision (a) of Section 11166.5.

28 (d) School districts that do not train their employees specified  
29 in subdivision (a) in the duties of mandated reporters under the  
30 child abuse reporting laws shall report to the State Department of  
31 Education the reasons why this training is not provided.

32 (e) Unless otherwise specifically provided, the absence of  
33 training shall not excuse a mandated reporter from the duties  
34 imposed by this article.

35 (f) Public and private organizations are encouraged to provide  
36 their volunteers whose duties require direct contact with and  
37 supervision of children with training in the identification and  
38 reporting of child abuse and neglect.

39 SEC. 2. Section 11166 of the Penal Code is amended to read:

1 11166. (a) Except as provided in subdivision (d), and in  
2 Section 11166.05, a mandated reporter shall make a report to an  
3 agency specified in Section 11165.9 whenever the mandated  
4 reporter, in his or her professional capacity or within the scope of  
5 his or her employment, has knowledge of or observes a child whom  
6 the mandated reporter knows or reasonably suspects has been the  
7 victim of child abuse or neglect. The mandated reporter shall make  
8 an initial report to the agency immediately or as soon as is  
9 practicably possible by telephone and the mandated reporter shall  
10 prepare and send, fax, or electronically transmit a written followup  
11 report thereof within 36 hours of receiving the information  
12 concerning the incident. The mandated reporter may include with  
13 the report any nonprivileged documentary evidence the mandated  
14 reporter possesses relating to the incident.

15 (1) For the purposes of this article, “reasonable suspicion” means  
16 that it is objectively reasonable for a person to entertain a suspicion,  
17 based upon facts that could cause a reasonable person in a like  
18 position, drawing, when appropriate, on his or her training and  
19 experience, to suspect child abuse or neglect. For the purpose of  
20 this article, the pregnancy of a minor does not, in and of itself,  
21 constitute a basis for a reasonable suspicion of sexual abuse.

22 (2) The agency shall be notified and a report shall be prepared  
23 and sent, faxed, or electronically transmitted even if the child has  
24 expired, regardless of whether or not the possible abuse was a  
25 factor contributing to the death, and even if suspected child abuse  
26 was discovered during an autopsy.

27 (3) Any report made by a mandated reporter pursuant to this  
28 section shall be known as a mandated report.

29 (b) If after reasonable efforts a mandated reporter is unable to  
30 submit an initial report by telephone, he or she shall immediately  
31 or as soon as is practicably possible, by fax or electronic  
32 transmission, make a one-time automated written report on the  
33 form prescribed by the Department of Justice, and shall also be  
34 available to respond to a telephone followup call by the agency  
35 with which he or she filed the report. A mandated reporter who  
36 files a one-time automated written report because he or she was  
37 unable to submit an initial report by telephone is not required to  
38 submit a written followup report.

39 (1) The one-time automated written report form prescribed by  
40 the Department of Justice shall be clearly identifiable so that it is

not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, which ever occurs first.

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a

1 communication, intended to be in confidence, including, but not  
2 limited to, a sacramental confession, made to a clergy member  
3 who, in the course of the discipline or practice of his or her church,  
4 denomination, or organization, is authorized or accustomed to hear  
5 those communications, and under the discipline, tenets, customs,  
6 or practices of his or her church, denomination, or organization,  
7 has a duty to keep those communications secret.

8 (2) Nothing in this subdivision shall be construed to modify or  
9 limit a clergy member's duty to report known or suspected child  
10 abuse or neglect when the clergy member is acting in some other  
11 capacity that would otherwise make the clergy member a mandated  
12 reporter.

13 (3) (A) On or before January 1, 2004, a clergy member or any  
14 custodian of records for the clergy member may report to an agency  
15 specified in Section 11165.9 that the clergy member or any  
16 custodian of records for the clergy member, prior to January 1,  
17 1997, in his or her professional capacity or within the scope of his  
18 or her employment, other than during a penitential communication,  
19 acquired knowledge or had a reasonable suspicion that a child had  
20 been the victim of sexual abuse that the clergy member or any  
21 custodian of records for the clergy member did not previously  
22 report the abuse to an agency specified in Section 11165.9. The  
23 provisions of Section 11172 shall apply to all reports made pursuant  
24 to this paragraph.

25 (B) This paragraph shall apply even if the victim of the known  
26 or suspected abuse has reached the age of majority by the time the  
27 required report is made.

28 (C) The local law enforcement agency shall have jurisdiction  
29 to investigate any report of child abuse made pursuant to this  
30 paragraph even if the report is made after the victim has reached  
31 the age of majority.

32 (e) Any commercial film and photographic print processor or  
33 commercial computer technician who has knowledge of or  
34 observes, within the scope of his or her professional capacity or  
35 employment, any film, photograph, videotape, negative, or slide,  
36 or any computer file, recording, CD-ROM, magnetic disk memory,  
37 magnetic tape memory, picture, graphic or image that is  
38 intentionally saved, transmitted or organized on hardware or any  
39 other media; including, but not limited to, CD, DVD, and  
40 thumbdrive, whether by digital, analog, or other means and whether

1 directly viewable, compressed, or encoded, depicting a child who  
2 appears to be under 16 years of age being subject to, or involved  
3 in, sexual abuse, shall ~~immediately, or as soon as practicably~~  
4 ~~possible, by telephone,~~ report the instance of suspected abuse to  
5 a local, state, or federal law enforcement agency located in the  
6 county in which the images are seen, and shall, ~~within 36 hours~~  
7 ~~of receiving the information concerning the incident, prepare and~~  
8 ~~send, fax, or electronically~~ *seen immediately, or as soon as*  
9 *practicably possible, by telephone and shall* transmit a written  
10 report of it with a copy of the material attached. ~~A report submitted~~  
11 ~~to the National Center for Missing and Exploited Children pursuant~~  
12 ~~to Section 13032 of Title 42 of the United States Code shall fulfill~~  
13 ~~the requirement for a commercial computer technician to make a~~  
14 ~~report pursuant to this section.~~ *attached, within 36 hours of*  
15 *receiving the information concerning the incident.*

16 (f) Any mandated reporter who knows or reasonably suspects  
17 that the home or institution in which a child resides is unsuitable  
18 for the child because of abuse or neglect of the child shall bring  
19 the condition to the attention of the agency to which, and at the  
20 same time as, he or she makes a report of the abuse or neglect  
21 pursuant to subdivision (a).

22 (g) Any other person who has knowledge of or observes a child  
23 whom he or she knows or reasonably suspects has been a victim  
24 of child abuse or neglect may report the known or suspected  
25 instance of child abuse or neglect to an agency specified in Section  
26 11165.9.

27 (h) When two or more persons, who are required to report,  
28 jointly have knowledge of a known or suspected instance of child  
29 abuse or neglect, and when there is agreement among them, the  
30 telephone report may be made by a member of the team selected  
31 by mutual agreement and a single report may be made and signed  
32 by the selected member of the reporting team. Any member who  
33 has knowledge that the member designated to report has failed to  
34 do so shall thereafter make the report.

35 (i) (1) The reporting duties under this section are individual,  
36 and no supervisor or administrator may impede or inhibit the  
37 reporting duties, and no person making a report shall be subject  
38 to any sanction for making the report. However, internal procedures  
39 to facilitate reporting and apprise supervisors and administrators

1 of reports may be established provided that they are not inconsistent  
2 with this article.

3 (2) The internal procedures shall not require any employee  
4 required to make reports pursuant to this article to disclose his or  
5 her identity to the employer.

6 (3) Reporting the information regarding a case of possible child  
7 abuse or neglect to an employer, supervisor, school principal,  
8 school counselor, coworker, or other person shall not be a substitute  
9 for making a mandated report to an agency specified in Section  
10 11165.9.

11 (j) A county probation or welfare department shall immediately,  
12 or as soon as practicably possible, report by telephone, fax, or  
13 electronic transmission to the law enforcement agency having  
14 jurisdiction over the case, to the agency given the responsibility  
15 for investigation of cases under Section 300 of the Welfare and  
16 Institutions Code, and to the district attorney's office every known  
17 or suspected instance of child abuse or neglect, as defined in  
18 Section 11165.6, except acts or omissions coming within  
19 subdivision (b) of Section 11165.2, or reports made pursuant to  
20 Section 11165.13 based on risk to a child which relates solely to  
21 the inability of the parent to provide the child with regular care  
22 due to the parent's substance abuse, which shall be reported only  
23 to the county welfare or probation department. A county probation  
24 or welfare department also shall send, fax, or electronically transmit  
25 a written report thereof within 36 hours of receiving the information  
26 concerning the incident to any agency to which it makes a  
27 telephone report under this subdivision.

28 (k) A law enforcement agency shall immediately, or as soon as  
29 practicably possible, report by telephone, fax, or electronic  
30 transmission to the agency given responsibility for investigation  
31 of cases under Section 300 of the Welfare and Institutions Code  
32 and to the district attorney's office every known or suspected  
33 instance of child abuse or neglect reported to it, except acts or  
34 omissions coming within subdivision (b) of Section 11165.2, which  
35 shall be reported only to the county welfare or probation  
36 department. A law enforcement agency shall report to the county  
37 welfare or probation department every known or suspected instance  
38 of child abuse or neglect reported to it which is alleged to have  
39 occurred as a result of the action of a person responsible for the  
40 child's welfare, or as the result of the failure of a person responsible

1 for the child's welfare to adequately protect the minor from abuse  
2 when the person responsible for the child's welfare knew or  
3 reasonably should have known that the minor was in danger of  
4 abuse. A law enforcement agency also shall send, fax, or  
5 electronically transmit a written report thereof within 36 hours of  
6 receiving the information concerning the incident to any agency  
7 to which it makes a telephone report under this subdivision.

8 SEC. 3. No reimbursement is required by this act pursuant to  
9 Section 6 of Article XIII B of the California Constitution for certain  
10 costs that may be incurred by a local agency or school district  
11 because, in that regard, this act creates a new crime or infraction,  
12 eliminates a crime or infraction, or changes the penalty for a crime  
13 or infraction, within the meaning of Section 17556 of the  
14 Government Code, or changes the definition of a crime within the  
15 meaning of Section 6 of Article XIII B of the California  
16 Constitution.

17 However, if the Commission on State Mandates determines that  
18 this act contains other costs mandated by the state, reimbursement  
19 to local agencies and school districts for those costs shall be made  
20 pursuant to Part 7 (commencing with Section 17500) of Division  
21 4 of Title 2 of the Government Code.